Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

SUPREME COURT
OF THE UNITED STATES

No. 79-1666
October Term, 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT
COMPANY, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT.

William E. Balter
Member of Bar of
U.S. Supreme Court

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Attorneys for Petitioner

TOPICAL INDEX

	Page
Introduction	1
Opinion Below	1
Questions Presented	2
Constitutional Provisions and Statutes Involved	2
Statement Of Case	3
Reasons For Allowance Of The Writ	5
Conclusion	7
Appendix "A"	8
Appendix "B"	12
Appendix "C"	14
Proof Of Service	15

TABLE OF AUTHORITIES

Codes	**Page**
45 U.S.C Sec. 51	2,3,5

SUPREME COURT
OF THE UNITED STATES
No:_____
October Term 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT COMPANY, et. al.,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

INTRODUCTION

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California, Second Appellate District entered on November 28th 1979, and the denial of the Petition for Hearing denied by the Supreme Court of the State of California on January 24, 1980.

OPINION BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District is printed in Appendix A hereto and is reported at 99 C.A. 3rd 97 and 159 Cal. Rptr. 915.

QUESTIONS PRESENTED

Does a Federal Court's jury determination of an amount of damages to be awarded to a railroad employee under the Federal Employee Liability Act, Title 45 United States Code Section 51, et seq. preclude such an employee from pursuing a State Court action against a joint or concurrent tortfeasor where there has been a Satisfaction of Judgment of the Federal Judgment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Federal statute involved in the case is Title 45 United States Code Section 51 which reads as follows:

"Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting **in whole or in part from the negligence of** any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, inits cars, engines, appliances, machinery,

track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter."

Apr. 22, 1908, c. 149 §1, 35 Stat. 65; Aug, 11, 1939, c. 685, §1, 53 Stat. 1404.

STATEMENT OF CASE

In November 1972, petitioner, a railroad switchman employed by Southern Pacific Transportation Company, was injured when he fell in a hole beside a track while performing switching operations on the premises of California Portland Cement Company. In October 1973, plaintiff filed a personal injury action for damages against Southern Pacific Transportation Company and California Portland Cement Company in the United States Federal District Court for the Central District of California alleging that his injuries were caused by the dangerous condition of equipment and premises on which he was working. The basis for liability against the Southern Pacific Transportation Company was the Federal Employers' Liability Act, 45 USC Section 51, et seq. and the basis for liability against defendant, California Portland Cement Company was common law negligence. In November, 1973 plaintiff filed a second action for the same

injury in the Los Angeles Superior Court. The factual allegations of the state complaint were identical to those of the federal complaint except petitioner also alleged a cause of action for punitive damages against California Portland Cement, In March, 1974, the Federal Claim against California Portland Cement Company was dismissed for lack of jurisdiction. Nevertheless, plaintiff proceeded with the prosecution of his federal action against Southern Pacific Transportation Company and in September, 1974 in a jury trial he obtained a verdict for damages in an amount of $75,625.00. The jury arrived at this amount by finding that $137,500.00 was the sum that would compensate plaintiff for his injuries and by further finding that plaintiff's negligence contributed 45 percent to his injuries. Judgment against Southern Pacific Transportation Company for $75,625.00 was paid in full in October, 1974.

When the state court action subsequently came to trial in September, 1977, California Portland Cement Company asserted two special defenses: (1) satisfaction and payment of the federal judgment barred the state action, and (2) plaintiff was collaterally estopped from relitigating the issues of damages and comparative negligence. After hearing argument on the special defenses the trial court concluded that satisfaction of the federal judgment discharged California Portland Cement Company from any liability to plaintiff arising out of the operative facts that formed the basis of and constituted the cause of action prosecuted by plaintiff.

From the judgment in favor of California Portland

Cement, plaintiff appealed to the Court of Appeal of the State of California, Second Appellate District. That Court affirmed the judgment of the trial court holding that the Satisfaction of the Federal Judgment precluded petitioner from pursuing his State Court action against California Portland Cement Company.

The federal question and interpretation of the applicable statute, to wit: 45 USC Section 51 were raised at the trial court and also at the Appellate Court levels, orally and by way of written brief.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner sets forth below the reasons why the writ should be allowed:

The petitioner was never permitted to litigate the issue of punitive damages against California Portland Cement even though this issue was never litigated in the Federal Court action because punitive damages are not pemitted under the Federal Employers' Liability Act. Additionally, and more importantly, petitioner was deprived of his right to litigate the issue of compensatory damages as to California Portland Cement wherein he could have recieved additional compensatory damages over and above the amount he obtained from Southern Pacific Transportation Company. The basis of this last statement is that in the Federal Court action petitioner was held to be culpable of forty-five percent (45%) contributory negligence under the Federal Employers' Liability Act. A jury such as the one that decided this case in the Federal Court

can assess contributory negligence against a railroad employee when **the negligence of the employer plays any part no matter how small in actually causing his injury.** Thus the proximate cause test applied to petitioner's contributory negligence is liberal as to a defendant railroad employer. On the other hand, if the case had been permitted to go to a jury in the State Court action against California Portland Cement Company it could have been determined that petitioner was not culpable of any contributory negligence or a lesser degree than forty-five percent (45%) since under the common law and California law definition of proximate causation a proximate cause is that which in natural and continuous sequence preduces the injury, and without which the injury would not have occurred. Thus the proximate cause test on the issue of contributory negligence that would have been utilized in the State Court had the case been permitted to proceed would have been different and more stringent with the possible result that petitioner's degree of contributory negligence would have been different.

By way of illustration, if the plaintiff in the action against California Portland Cement had been able to present these issues to a jury, and if, by way of example, a jury would have found that the plaintiff was only guilty of ten percent (10%) contributory negligence as to the defendant, California Portland Cement, the plaintiff at the very least would have collected an additional Forty-Seven Thousand One Hundred and Twenty-Five Dollars (47,125.00) against California Portland Cement. This can be

computed by assuming that the total amount of damages before reduction for contributory negligence found by the jury in the Federal Court action, that is One Hundred Twenty-Three Thousand Seven Hundred Fifty Dollars ($123,750.00) that is attributable for damages to California Portland Cement. If a credit for the net amount of damages recovered against the Southern Pacific Transportation Company in the Federal Court action, that is Seventy-Five Thousand Six Hundred Twenty-Five Dollars ($75,625.00) is applied, then California Portland Cement still must pay to the plaintiff and appellant the sum of Forty-Seven Thousand One Hundred Twenty-Five Dollars ($47,125.00) in in addition to any punitive damages that might have been assessed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

WILLIAM E. BALTER
Member of Bar of
U.S. Supreme Court

and

THOMAS F. MORTIMER
Attorneys for Petitioner

April 21, 1980

APPENDIX "A"

CERTIFIED FOR PUBLICATION

Received
DEC. 3 1979

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

2 CIVIL NO. 55207
(Super. Ct. No. C71176)

JACK FLETCHER,
Plaintiff and Appellant,

v.

CALIFORNIA PORTLAND CEMENT COMPANY, INC.
Defendant and Respondent

COURT OF APPEAL-SECOND DIST.
FILED
NOV 28 1979
CLAY ROBBINS JR. CLERK
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Hon. Parks Stillwell, Judge. Affirmed.

Thomas F. Mortimer, Esq., for Appellant.

Messrs. Rutan & Tucker, Theodore I. Wallace, Jr., William J. Caplan, by William J. Caplan, for Respondent.

Plaintiff Jack Fletcher appeals a judgment in favor of defendant California Portland Cement Co. The issue is whether a concurrent tortfeasor's payment and satisfaction of an earlier judgment of the federal court discharged California Portland Cement from any liability.

In November 1972, plaintiff, a railroad switchman employed by Southern Pacific Transportation Company (SP), was injured when he fell in a hole beside a truck while performing switching operations on the premises of California Portland Cement Company (CPC). In October 1973 plaintiff filed a personal injury action for damages against SP and CPC in federal district court alleging that his injuries were caused by the dangerous condition of equipment and premises on which he was working. In November 1973 plaintiff filed a second action for the same injury in the Los Angeles Superior Court. The factual allegations of the state complaint were identical to those of the federal complaint.

In March 1974 the federal claim against CPC was dismissed for lack of jurisdiction. Nevertheless, plaintiff proceeded with prosecution of his federal action against SP, and in September 1974 in a jury trial he obtained a verdict for damages in an amount of $75,625. The jury arrived at this amount by finding that $137,500 was the sum that would compensate plaintiff for his injuries and by further finding that plaintiff's negligence contributed 45 percent to his injuries, Judgment against SP for $75,625 was paid in full in October 1974.

When the state court action subsequently came to trial in September 1977 CPC asserted two special defenses; (1) satisfaction and payment of the federal judgment barred the state action, and (2) plaintiff was collaterally estopped from relitigating the issues of damages and comparative negligence. After hearing argument on the

special defenses the trial court concluded that satisfaction of the federal judgment discharged CPC from any liability to plaintiff arising out of the operative facts that formed the basis of and constituted the cause of action prosecuted by plaintiff. From a judgment in favor of CPC, plaintiff appeals.

An injured person is entitled to only one satisfaction of judgment for a single harm, and full payment of a judgment by one tortfeasor discharges all others who may be liable for the same injury. This rule, designed to prevent double recovery and never-ending litigation by dissatisfied claimants, applies whether a single judgment has been obtained against joint or concurrent tortfeasors, whether separate judgments of equivalent or disparate amounts have been obtained against the tortfeasors. or whether no other judgment has been obtained against other tortfeasors. (**Watson v. McEwen** (1964) 225 Cal. APP. 2d 771, 774-775; **Winzler & Kelly v. Super. Ct.** (1975) 48 Cal. App. 3d 385, 392-393.) It is beyond dispute that the allegations of plaintiff's complaint, if proved, made CPC a concurrent tortfeasor, liable for the same injury for which plaintiff has already recovered a full compensation from SP. Accordingly, the trial court correctly ruled that satisfaction of the federal judgment discharged CPC from any liability it may have had to plaintiff.

In view of this conclusion, we do not reach the issue of collateral estoppel.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

_____,J.

FLEMING

We concur:

_____, P.J.

ROTH

_____, J.

COMPTON

APPENDIX "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

JACK FLETCHER,

Plaintiff,

V.

SOUTHERN PACIFIC TRANSPORTATION COMPANY, et. al.,

Defendants.

No. C 71176
JUDGMENT

The above-entitled action came on regularly for trial on September 21, 1977 before the court sitting without jury.

Thomas F. Mortimer appeared as counsel for plaintiff and Rutan & Tucker, by Theodore I. Wallace, Jr., appeared as counsel for defendant, California Portland Cement Company, Inc.

Evidence having been introduced by the respective parties hereto, and the matter having been submitted to the Court and the Court having made its findings of fact and drawn its conslusions of law;

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The Complaint is dismissed as to defendant, Southern Pacific Transportation Company.

2. Plaintiff shall take nothing by reason of his Complaint and defendant California Portland Cement Company, Inc. shall recover from plaintiff Jack Fletcher its costs of suit in the amount of $_____

Dated:_____

Judge of the Superior Court

APPENDIX "C"

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order

In re: 2 Civ. *No.* 55207

Fletcher

vs.

CALIFORNIA PORTLAND CEMENT Co. + Southern Pacific Transportation Company et al.

Respectfully,

G. E. BISHEL
Clerk

88378-877 2-79 4M OSP

PROOF OF SERVICE

State of California)
ss
County of Riverside)

I am a citizen of the United States and a resident of the county aforesaid: I am over the age of 18 years and not a party to the within entitled action: My business address is 612 N. Bush Street, Santa Ana, California 92701.

I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of four sealed envelopes with postage thereon fully paid, in the United States mail at Santa Ana, California, addressed to:

Rutan & Tucker
Attorneys at Law
The Bank of California Building
401 Civic Center Drive West
Santa Ana, California 92702

Clerk, Court of Appeal
2nd Appellate District, Rm 301
3580 Wilshire Blvd., 3rd Floor
Los Angeles, California 90010

California Supreme Court
3580 Wilshire Blvd. Room 213
Los Angeles, California 90010

Clerk of Superior Court
County of Los Angeles
111 North Hill Street
Los Angeles, California 90012

I CERTIFY under penalty of perjury that the foregoing is true and correct. Executed on April 22, 1980 at Santa Ana, California.

JACK GALLAGHER

Supreme Court, U. S.
FILED
MAY 23 1980
MICHAEL RODAK, JR., CLERK

SUPREME COURT
OF THE UNITED STATES

No. 79-1666

October Term 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT COMPANY, et al.,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

GARVIN F. SHALLENBERGER
Member of the Bar of
the U.S. Supreme Court

RUTAN & TUCKER
THEODORE I. WALLACE, JR.
WILLIAM J. CAPLAN
401 Civic Center Drive West
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Attorneys for Respondent

TOPICAL INDEX

Page

INTRODUCTION 1

OPINION OF THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPEALLATE DISTRICT 2

ISSUES PRESENTED 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF CASE 3

REASONS FOR DENIAL OF THE PETITION 5

I. THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION TO GRANT THE PETITION FOR WRIT OF CERTOIRARA BECAUSE NO FEDERAL QUESTION WAS PRESENTED IN THE CALIFORNIA STATE COURT ACTION, EITHER AT TRIAL OR ON APPEAL 5

II. THE PETITION SHOULD BE DENIED BECAUSE PETITIONER HAS FAILED TO SET OUT THE FEDERAL QUESTION PRESENTED AND HAS FAILED TO STATE THE TIME, MANNER AND METHOED BY WHICH THE PURPORTED FEDERAL QUESTION WAS RAISED IN STATE COURT. 7

CONCLUSION 9

PROOF OF SERVICE..... 10

TABLE OF AUTHORITIES

Cases **Page**

Southwestern Bell Telephone Company v. Oklahoma, 303 U.S. 206,212-213, 58 S. Ct. 528, 82 L. Ed. 751, 757 (1938) 5, 6

Watson v. McEwen, 225 Cal. App. 2d 771, 744-75, 37 Cal. Rptr. 677 (1964)..... 6

Winzler & Kelly v. Superior Court, 48 Cal. App. 3d 385, 392-393, 122 Cal. Rptr. 259 (1975) ... 6

Other **Page**

Federal Employers' Liability Act, 45 U.S.C. §51 **et seq.**..... 3, 6, 7

Title 28 U.S.C.A. Rule 23(f) 7, 9

Title 28 U.S.C.A. Rule 23(4)..... 8

SUPREME COURT
OF THE UNITED STATES

No. _____

October Term 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT COMPANY, et al.,

Respondents.

Opposition to Petition For Writ Of Certiorari To The Court of Appeal, State of California, Second Appellate District.

INTRODUCTION

Respondent California Portland Cement Company respectfully prays that the United States Supreme Court deny this Petition for Writ of Certiorari on the ground that it does not present a federal question and on the further ground that Petitioner has not complied with the United States Supreme Court Rules in filing his Petition.

OPINION OF THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

The opinion of the Court of Appeal of the State of California, Second Appellate District is reported at 99 Cal. App. 3d 97 and 159 Cal. Rptr. 915. The decision is reprinted in Appendix A of the Petition for Writ of Certiorari filed by Petitioner.

ISSUES PRESENTED

1. The United States Supreme Court does not have jurisdiction to grant the Petition for Writ of Certiorari because no federal question was presented in the California state court action, either at trial or on appeal.

2. Since Petitioner has failed to set out the federal question presented and has failed to state the time, manner and method by which the purported federal question was raised in state court, the Petition should be denied.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Petition before the court does not present a constitutional issue involving the interpretation of a federal matter.

STATEMENT OF CASE

Petitioner's Complaint alleges that in November 1972, Petitioner, a railroad switchman employed by Southern Pacific Transportation Company, was injured when he fell into a hole beside a track while performing switching operations on the premises of California Portland Cement Company.

In October 1973, plaintiff filed a complaint against Southern Pacific Transportation Company and California Portland Cement Company in the United States Federal District Court for the Central District of California alleging that he sustained personal injuries as the result of the dangerous condition of equipment and premises on which he was working. **The basis for liability against the Southern Pacific Transportation Company was the Federal Employers' Liability Act, 45 U.S.C. §51 et seq., and the basis for liability against defendant California Portland Cement Company was common law negligence.** In November of 1973, plaintiff filed a similar complaint in the Los Angeles Superior Court naming the same defendants and alleging the same facts.

In March of 1974, the complaint against California Portland Cement Company was dismissed by the Federal District Court for lack of jurisdiction. Nevertheless, plaintiff proceeded with the prosecution of his federal action against Southern Pacific Transportation Company, and in September of 1974 he obtained a jury verdict for damages in an amount of $75,625.00. The jury found that

$137,500.00 was the sum that would fully compensate plaintiff for his injuries but that plaintiff's negligence contributed 45 percent to his injuries. Judgment was entered against Southern Pacific Transportation Company for $75,625.00, that was paid in full in October of 1974, and a satisfaction of judgment was filed by the plaintiff.

When the state court action subsequently came to trial in Septrember of 1977, California Portland Cemnet Company asserted two special defenses against Petitioner's action for common law negligence: (1) satisfaction and payment of the federal judgment barred the state action, and (2) plaintiff was collaterally estopped from relitigating the issues of damages and comparative negligence. **After receiving evidence and hearing argument on the special defenses, the trial court concluded that satisfaction of the federal judgment discharged California Portland Cement Company from any liability to plaintiff arising out of the operative facts that formed the basis of and constituted the cause of action prosecuted by plaintiff.**

From the judgment in favor of California Portland Cement, plaintiff appealled to the Court of Appeal of the State of California, Second Appellate District. Applying California law, that court affirmed the judgment of the trial court, holding that the satisfaction of the judgment rendered in the federal court precluded Petitioner from obtaining a further recovery against California Portland Cement Company. The California Supreme Court denied

Petitioner's Petition for Hearing on January 24, 1980. No federal question was raised, either at trial or on appeal.

REASONS FOR DENIAL OF THE PETITION

I

THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION TO GRANT THE PETITION FOR WRIT OF CERTIORARI BECAUSE NO FEDERAL QUESTION WAS PRESENTED IN THE CALIFORNIA STATE COURT ACTION, EITHER AT TRIAL OR ON APPEAL

No federal question is presented by the judgment rendered in the California state court action, and therefore, the United States Supreme Court does not have jurisdiction to grant the Petition for Writ of Certiorari. On this issue of jurisdiction, the United States Supreme Court stated the following:

> **We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that**

> **the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. Southwestern Bell Telegraph Company v. Oklahoma**, 303 U.S. 206, 212-213, 58 S. Ct. 528, 82 L. Ed. 751, 757 (1938) (emphasis added).

In the instant action the trial court rendered judgment for Respondent and against Petitioner on the sole ground that satisfaction and payment of the judgment by Southern Pacific Transportation Company barred any further recovery against Respondent, which was an alleged joint or concurrent tortfeasor. The trial court's decision was based upon the common law of the State of California, as had earlier been delineated in the California cases of **Watson v. McEwen**, 225 Cal. App. 2d 771, 744-775, 37 Cal. Rptr. 677 (1964); and **Winzler & Kelly v. Superior Court,** 48 Cal. App. 3d 385, 392-393, 122 Cal. Rptr. 259 (1975). The California common law rule as enumerated in those cases is that a plaintiff may have only one recovery, and where he has obtained a judgment which has been paid and satisfied he may not obtain any further recovery from an alleged joint or concurrent tortfeasor. No federal question is raised by the application of this rule of California common law.

Petitioner argues, by implication only, that the California state court's ruling, and the appellate court's affirmation of that ruling, involved interpretation of the Federal Employers' Liability Act, Title 45 United States Code § 51. An inspection of the California Court of

Appeal, Second District, opinion (Appendix "A" to the Petition) reveals that no interpretation of the Federal Employers' Liability Act was required and none occurred. Accordingly, no federal question was presented and, therefore, the Petition must be denied.

II

THE PETITION SHOULD BE DENIED BECAUSE PETITIONER HAS FAILED TO SET OUT THE FEDERAL QUESTION PRESENTED AND HAS FAILED TO STATE THE TIME, MANNER AND METHOD BY WHICH THE PURPORTED FEDERAL QUESTION WAS RAISED IN STATE COURT.

Petitioner has failed to comply with Rule 23(f) of the Supreme Court Rules (28 U.S.C.A. Rule 23(f) which provides that:

> (f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings of the court of first instance and in the appellate court, at which, and the manner in which, the federal question sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof,

with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, then they shall be included in an appendix to the petition, which may, if more convenient, be separately presented.

It is apparent from the Petition that the manner and method by which a federal question was raised has not been stated, nor have pertinent portions of the record been provided, in order to show that a federal question was timely raised. These omissions alone provide a sufficient basis for denying the Petition. Title 28 U.S.C.A. Rule 23(4) states:

> 4. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Therefore, on this ground alone, the Petition should be denied.

CONCLUSION

The Petition should be denied because it does not present a federal question and because Petitioner has failed to comply with the requirements of Title 28, U.S.C.A. 23(f).

Respectfully submitted,

GARVIN F. SHALLENBERGER
Member of the Bar of
the U.S. Supreme Court
and
Messrs. Rutan & Tucker, Theodore I.
Wallace, Jr., and William J. Caplan

Attorneys for Respondent

May _____ , 1980

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss.
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my busines address is 612 N. Bush Street, Santa Ana, California 92701.

On May 21, 1980 I served the within OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of 4 sealed envelopes with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

William E. Balter
Suite 2103
3250 Wilshire Blvd.
Los Angeles, CA 90010

California Supreme Court
3580 Wilshire Blvd.
Room 213
Los Angeles, CA 90010

Thomas F. Mortimer
Suite 650
3055 Wilshire Blvd.
Los Angeles, CA 90010

Clerk of the Superior Cour
County of Los Angeles
111 North Hill Street
Los Angeles, CA 90012

Clerk, Court of Appeal
Second Appellate District
3580 Wilshire Blvd., 3rd Floor
Los Angeles 90010

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 21, 1980, at Santa Ana, California.

JACK GALLAGHER